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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE**

BRISTOL BAY ECONOMIC
DEVELOPMENT CORPORATION, *et al.*,

Plaintiffs,

v.

CHRIS HLADICK, U.S.
ENVIRONMENTAL PROTECTION
AGENCY, *et al.*,

Defendants.

CASE NO. 3:19-CV-00265-SLG

SALMONSTATE, *et al.*,

Plaintiffs,

v.

CHRIS HLADICK, U.S.
ENVIRONMENTAL PROTECTION
AGENCY, *et al.*,

Defendants.

CASE NO. 3:19-CV-00267-SLG

TROUT UNLIMITED,

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, *et al.*,

Defendants.

CASE NO. 3:19-CV-00268-SLG

1 **PLAINTIFFS' SCHEDULING CONFERENCE REPORT, AND**
2 **MOTION FOR ENTRY OF SCHEDULING ORDER**

3 Plaintiffs and Defendants in this consolidated case conferred but were unable to
4 reach agreement on a schedule for proceedings in the case. Plaintiffs provide this report
5 and move for entry of a scheduling order that reflects the schedule and dates set forth
6 below, which largely track the schedule contemplated by Rule 16.3.¹ In support of this
7 motion, Plaintiffs advise the court as follows:
8

9 **I. Preliminary Matters**

10 1. The Parties agree that this case will be managed as an administrative appeal
11 pursuant to Local Civil Rule 16.3, except as may otherwise be specifically provided in the
12 Court's scheduling order(s).
13

14 2. This case is an action for judicial review of final agency action to withdraw a
15 proposed determination to restrict the use of certain lands in the Bristol Bay area of
16 southwest Alaska as disposal sites for dredged or fill material associated with mining the
17 Pebble deposit. 84 Fed. Reg. 45,749 (August 30, 2019). Plaintiffs allege that the
18 withdrawal was arbitrary under the Clean Water Act, 33 U.S.C. § 1344(c), and the
19 Administrative Procedure Act, 5 U.S.C. § 706. Plaintiffs ask the Court to set aside the
20 withdrawal, thereby reinstating the proposed determination.
21
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25 ¹ Minor variations in the schedule afford the Defendants an extra week to respond to the
26 Complaints and produce the agency record; it also avoids requiring that the Plaintiffs file responses on New Year's Eve.

3. The withdrawal of the proposed determination allows the U.S. Army Corps of Engineers to issue a permit for discharge of dredged and fill material under section 404 of the Clean Water Act, 33 U.S.C. § 1344. *See* 33 C.F.R. § 323.6(b); 40 C.F.R. § 231.3(a)(2). If the withdrawal remains in effect, the Parties currently expect a record of decision from the Corps in May 2020. For this reason, Plaintiffs request a final ruling on the merits of this case, if possible, by May 1, 2020, before the Corps issues a section 404 permit.

4. To facilitate a decision by this date, Plaintiffs in all the consolidated cases propose to file single, joint briefs as set forth below, with the exception that each of the three plaintiff groupings reserves the option to submit a short supplemental brief (not to exceed 2,000 words) in support of the jointly filed brief.

5. The Parties anticipate that intervenor-defendants may seek to participate in these proceedings. To avoid redundancy and facilitate timely review, Plaintiffs propose that any intervenor-defendants' brief on the merits be filed one week after Defendants' brief and limited to 4,000 words.

6. Plaintiffs propose the following schedule:

II. Motion and Briefing Schedule

Document / Action	Proposed Deadline	Proposed Word Limits
Defendants' Responses to Complaints [including any Motions to Dismiss]	12/16/2019	N/A to Answers; 10,000 if Motion(s) to Dismiss filed

1	Agency Record	12/17/2019	N/A
2	Plaintiffs' Response(s) to any	1/6/2020	10,000 for a joint brief
3	Motions to Dismiss filed by the		filed on behalf of all
4	Government [and any supplemental		Plaintiffs.
5	responses filed individual plaintiffs]		2000 for optional
6			supplemental responses
7			that may be filed by
8			Plaintiffs in each of the
9			three actions.
10	Joint Motion to	1/7/2020	5,700
11	Supplement/Complete Record, if		
12	any		
13	Defendants' Response to any	1/14/2020	5,700
14	Motions to Supplement the Record,		
15	if any		
16	Plaintiffs' Joint Opening Brief [and	1/16/2020	10,000 for a joint brief
17	any supplemental briefs filed		filed on behalf of all
18	individual plaintiffs]		Plaintiffs.
19			2000 for optional
20			supplemental briefs that
21			may be filed by Plaintiffs
22			in each of the three
23			actions.
24	Defendants' Replies to Oppositions	1/21/2020	5,700
25	to Motions to Dismiss, if any		
26	Plaintiffs' Joint Reply to	1/21/2020	2,750
	Government's Response to Motion		
	to Supplement the Record, if any		
	Defendants' Responses to Plaintiffs'	2/25/2020	10,000, plus 2,000
	Opening Brief(s)		additional for each
			Supplemental Brief
	Intervenor-Defendants' Briefs, if	3/3/2020	4,000
	any		
	Plaintiffs' Joint Reply Brief	3/17/2020	8,000
	Request for Oral Argument, if any	3/23/2020	N/A
	Joint Appendix	3/31/2020	N/A

1 **III. Hearing on Motions.**

- 2 **A.** Plaintiffs request that, if oral argument is requested and granted, it be
3 scheduled in April 2020, subject to the Court's discretion to revise that date
4 based on the briefs submitted by all parties and the Court's convenience.
- 5 **B.** Plaintiffs request a decision from the court by May 1, 2020, if possible, so as
6 to ensure that the issues raised in these cases will be resolved before the Army
7 Corps of Engineers issues a decision on the permit for Pebble Mine that is at
8 issue in these cases.

9
10 DATED this 6th day of November, 2019.

11
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Association

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CERTIFICATE OF SERVICE

I hereby certify that on November 6th, 2019, a copy of the foregoing was served upon counsel of record through the Court's CM/ECF system.

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16 DATED this 6th day of November, 2019.

17 */s Denise Brandenstein*

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